

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARJORIE FERRELL, <i>et al.</i> ,)	
)	No. C-1-01-447
Plaintiffs,)	Judge Sandra S. Beckwith
v.)	Magistrate Judge Timothy S. Hogan
WYETH-AYERST LABORATORIES, INC.,)	
<i>et al.</i> ,)	
)	
Defendants.)	
)	

**WYETH'S OPPOSITION TO PLAINTIFFS' MOTION TO SUSPEND THE
NOTICE DEADLINE PENDING THE COURT'S RULING ON PLAINTIFFS'
MOTION FOR VOLUNTARY DISMISSAL WITH PREJUDICE**

Defendants (collectively, "Wyeth") respectfully submit this opposition to plaintiffs' motion to suspend the deadline for implementation of class notice. There is no good cause to alter the deadlines established by Order of this Court this January and, thus, Wyeth respectfully requests that the Court deny plaintiffs' motion.

ARGUMENT

Pursuant to Federal Rule of Civil Procedure 16(b), a scheduling order "shall not be modified except upon a showing of good cause and by leave of the" Court. *Id.*; *Leary v. Daeschner*, 349 F.3d 888, 906 (6th Cir. 2003). Plaintiffs have failed to establish good cause, because they have not demonstrated that they have been diligent in attempting to meet the Court's deadline for class notice, or that there would be no prejudice to Wyeth if their failure to meet the deadline were excused. *See Daeschner*, 349 F.3d at 906 (citing *Inge v. Rock Financial Corp.*, 281 F.3d 613, 625 (6th Cir. 2002)).

By Order of January 5, 2006, this Court established June 1, 2006 as the date for dissemination of class notice in this case. Assuming a 90-day opt-out period, this date allows the Court to lock-in the membership of the class prior to the resolution of summary judgment (which Wyeth will file shortly after notice is disseminated) and prior to trial (which is scheduled to commence in January 2007). Although they have been aware of the June 1 deadline for issuing class notice since the beginning of this year, plaintiffs have not shown that they have taken any steps to prepare for dissemination of notice to class members. For example, they have not circulated a draft form of notice to either Wyeth or the Court. Plaintiffs' primary excuses for their failure to prepare a draft notice -- and their reasons for requesting a suspension in the current deadline -- are that (1) the briefing schedule for their concurrent motion for voluntary dismissal may make the deadline for class notice moot and (2) class notice at this stage would be "confusing" to class members. Pls.' Mem. at 1-2. The Court should reject these arguments.

First, Wyeth has not used the full twenty-one days allotted for filing an opposition to plaintiffs' dismissal motion. Thus, plaintiffs' motion for voluntary dismissal will be fully briefed well before the June 1 date for class notice. Second, should the Court decide to deny plaintiffs' motion for voluntary dismissal and order that this case proceed in accordance with the Court's existing Calendar Order, class notice would simply notify the absent class members of the Court's certification of the subclasses and set forth opt-out provisions. There is nothing "confusing" about such a notice. Finally, any further delay of class notice in this case -- where the class was certified nearly two years ago -- would further complicate the schedule in this case and would prejudice Wyeth, which desires to promptly obtain judgment against the class by way of summary judgment.

CONCLUSION

For the reasons stated above, Wyeth respectfully submits that this Court should deny plaintiffs' motion to suspend the deadline for class notice.

Respectfully submitted,

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Dated: May 9, 2006

CERTIFICATE OF SERVICE

This is to certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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